

REGISTER OF CLASSIFICATION DECISIONS

Date of entry in Register:	28 September 1998
Name of applicant/court:	The District Court at Wellington
Applicant to the Labelling Body:	Not Applicable
Title of Publication:	Untitled
Other Known Titles:	Folder One Number 103/40
Director:	Not Applicable
Producer:	Not Applicable
Publisher:	Not Applicable
Author:	Not Applicable
Format:	Photograph
Country of Origin:	Not Applicable
Language:	Not Applicable

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Components of film originally examined:

Feature:	Not Applicable	Running time:
Trailers:		Running time:
		Total Running time:

Excision/Alteration: Not Applicable.

Reason(s) for Excision:

Not Applicable.

Classification Decision:

Objectionable.

Display Conditions:

Not Applicable.

Descriptive Note:

... Please turn over

Not Applicable.

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Direction to issue a label has been given on Not Applicable

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SUMMARY OF THE REASONS FOR DECISION:

The untitled photograph, also known as *Folder One Number 103/40*, is classified as Objectionable.

The photograph exploits the nudity of children, appears to be intended for sexual arousal, and breaches the rights of children. It is a coloured photograph that has a glossy finish. The photograph measures 15.1cm by 10.1cm and is mounted on a piece of white cardboard which measures 29.7cm by 21cm. The numbers "103/40" appear in a small circle at the top of the photograph. The subject of the photograph is a small naked female. The child is lying asleep on a double mattress. She is on her back with her arms raised above her head.

The photograph is one of 49 photographs referred to the Classification Office under a court order. The photographs are of a similar nature, depicting two girls, either alone or together, in various states of undress.

In considering the matter, the Classification Office finds that s3(3) is relevant in that the photograph exploits the nudity of the girl pictured to a significant extent and degree. Contextual matters relating to the photograph have been considered under s3(4) of the Films, Videos, and Publications Classification Act 1993 (the FVPC Act).

Submissions made by both the informant and the parents of the young girls, who are the subject of the photographs, contend that the photographs deal with matters of sex in such a manner that the availability of the publications is likely to be injurious to the public good.

On its own, this photograph is not unlike any other family snapshot. However, taken in the context of the other 48 photographs a different scenario emerges. The Classification Office is required to examine and classify each publication in its own right. In arriving at a determination, the Classification Office is required, under s3(4) of the FVPC Act, to attend to the issues of availability and purpose. The fact is that this photograph was not taken in isolation. It is one of a series of photographs recording the state of dress, or undress as the case may be, of two young girls who are sisters. The sisters were not with their parents at the time the photographs were taken. The evidence put to the Classification Office is that the parents had no knowledge of the photographs being taken, and that the photographs were taken without their consent. There is therefore some suggestion that the photographs may be intended for circulation amongst adults with a sexual interest in children.

Furthermore, the interests of the children are at issue. The children's privacy has been breached, and their trust abused. Their right to privacy and to be free from exploitation are attested to in the United Nations Convention on the Rights of the Child, which New Zealand has ratified. In addition, the girls are readily identifiable, and easily located here in New Zealand. The Classification Office is concerned that the children's privacy is upheld, particularly where the photograph is open to a sexual interpretation, in light of the circumstances relating to the intended use of the photograph. The issue of how easily the photograph can be made widely available has significance when considering the factors discussed above. Thus, in arriving at its determination, the Classification Office gives weighting to the submissions made to the Classification Office by both the informant and the children's parents, sections 3(4)(b), (c), (d), (e) and (f) of the FVPC Act, and the rights of the child. The Classification Office believes that there is likely injury to the public good in the photograph being made available.

OFLC Ref: 9800408